

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO
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333 LOMAS BLVD., N.W., SUITE 660
ALBUQUERQUE, NEW MEXICO 87102
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JAMES O. BROWNING
District Judge

January 18, 2011

VIA CM/ECF

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Re: Hill v. Vanderbilt Capital Advisors, LLC et al., No. CIV 10-0133 JB/KBM

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Re: Hill v. Vanderbilt Capital Advisors, LLC et al., No. CIV 10-0133 JB/KBM

Dear Counsel of Record:

I want to bring a matter to your attention. I have, with my law clerks, reviewed the Judicial Code of Conduct and do not believe these matters require me to recuse myself. I want, however, everyone to be fully informed about, and fully comfortable with, my participation in the case.

At lunch recently, I learned or realized that the clerk working on this case with me has a mother with an interest in the Educational Retirement Fund. His mother is currently retired and draws a pension from the Fund. I had already screened my other clerk from this case. She has

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accepted an offer of employment with Rodey, Dickason, Sloan, Akin & Robb, P.A. upon completion of her clerkship. Moreover, her mother is a current employee of Albuquerque Public Schools, and is a member of the Fund. The familial interest in the Fund creates a potential conflict of interest under section 3F(2)(a)(iv) of the Code of Conduct for Judicial Employees for both clerks. Section 3F(2)(a)(iv) states:

Conflicts of Interest

(1) A judicial employee should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a judicial employee knows that he or she (or the spouse, minor child residing in the judicial employee's household, or other close relative of the judicial employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the judicial employee's ability properly to perform official duties in an impartial manner.

(2) Certain judicial employees, because of their relationship to a judge or the nature of their duties, are subject to the following additional restrictions:

(a) A staff attorney or law clerk should not perform any official duties in any matter with respect to which such staff attorney or law clerk knows that:

....

(iv) he or she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person (A) is a party to the proceeding, or an officer, director, or trustee of a party; (B) is acting as a lawyer in the proceeding; (C) has an interest that could be substantially affected by the outcome of the proceeding; or (D) is likely to be a material witness in the proceeding

Code of Conduct for Judicial Employees § 3F(2)(a)(iv).

While I have not concluded that my clerks' parents' participation in the Educational Retirement Fund creates a conflict under section 3F(2)(a)(iv), out of an abundance of caution, I have decided to screen my clerks from further work on this case. I will instead work with another clerk in the United States District Court for the District of New Mexico from outside of my chambers.

I started a Memorandum Opinion and Order and turned over the draft to my law clerk for further work. In making the transition to the new clerk, however, I did not provide all of my clerk's work to the new clerk. To avoid his influencing the analysis, I provided only the work my clerk had done on the factual and procedural background of the case. I did not provide any work product that

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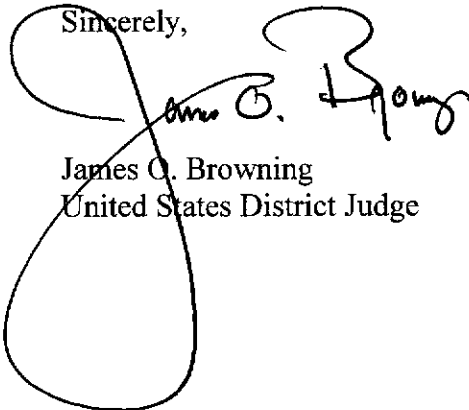
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involved analyzing the issues before me.

I believe that I can be fair and impartial. If anyone, however, has any questions about the above, please let my Courtroom Deputy Clerk, K'Aun Wild, know, and we can perhaps have a conference call. I have instructed Mrs. Wild not to tell me who may call. Best regards.

Sincerely,

A handwritten signature in black ink, appearing to read "James O. Browning". The signature is written in a cursive style with a large, looping initial "J".

James O. Browning
United States District Judge